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SIPDIS

STATE FOR EUR/WE AND EB/IPC URBAN

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TAGS: [KIPR](#) [ETRD](#) [ECON](#) [SP](#)

SUBJECT: SPAIN IPR: ABERRANT MOD CHIP RULING

REF: A. URBAN-YOUTH EMAILS

[1](#)B. MADRID 639

[1](#)1. According to an April 2004 ruling made by Barcelona Penal Court 3, the installation of mod chips (devices that allow customers to alter their video game consoles so they can operate games downloaded from the internet or from other regions) is legal. The Guardia Civil had investigated the practice and filed the suit against the Barcelona games shops, Innovagames. The case was weak as the Guardia Civil did not have any evidence of mod chip installation and was only able to find two mod chips after combing the premises.

[1](#)2. The judge ruled in favor of Innovagames, basing his decision on what he views as a loophole in Spanish Intellectual Property laws. Article 270 of the Spanish Penal Code prohibits the "manufacture, distribution or possession of means to crack computer program security codes," but makes no reference to what the ruling refers to as "electronic instruments destined to copy video and sound software." While the case has been cause for alarm in some circles and celebration in others, the victory for pirates will be short-lived. Spain's amended Penal Code enters into force on October 1, 2004 and much more clearly defines IP protection, specifically extending protection to audio, visual and audiovisual instruments.

[1](#)3. The Guardia Civil does not appeal court decisions, and the IP industry associations who would normally become involved have decided to keep a low profile to reduce the "buzz" on the decision. They acknowledge the case is so weak that it is extremely unlikely they would get a favorable decision on appeal.

[1](#)4. In addition, the decision is at odds with the rulings on four similar cases in Spain that found the use of mod chips clearly violates the intellectual property rights of video game console and program manufacturers. In 2001, in the first Spanish court case against mod chips, a Madrid court ruled that mod-chips are illegal because they permit use of illegal copies. In October 2002 a Barcelona court found that possession of mod chips is a punishable offense because they are a "mechanism to neutralize protection measures in software." A Leon court concluded in November 2003 that the distribution and installation of mod chips are IP crimes. In February 2004, a Logrono court differentiated between mod chip installation and possession. It found the former to be a crime, but not the latter.

[1](#)5. In a recent press release, the International Intellectual Property Alliance (IIPA) condemned the 2004 Barcelona court ruling, saying that it was "damaging." While we agree the court decision is of concern, we do not consider it representative of the view in Spain. Our contacts at the Ministry of Culture's Copyright Office had not been aware of the ruling until we brought the IIPA release to their attention. They do not see the decision as significant or trendsetting. They have been working with the new Minister of Culture to prepare the transposition of the European Copyright Directive into Spanish law (details to be reported septel). Since the Directive requires EC member states to provide "adequate legal protection against circumvention of any effective technological measures," Spanish transposition of the Directive may also help clarify the legal status of mod chips. We plan to track the transposition of the directive closely.

ARGYROS